

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ROLAND D. FOSTER,)	
)	
Petitioner,)	
)	
v.)	Case Number CIV-05-1443-C
)	
RANDALL G. WORKMAN, Warden,)	
)	
Respondent.)	

MEMORANDUM OPINION

Now before the Court is a Notice of Appeal filed by Petitioner Roland D. Foster (Foster), a prisoner appearing pro se. The Court construes Foster's Notice of Appeal as a Motion for Certificate of Appealability (COA) to appeal the Court's denial of his Petition for Writ of Habeas Corpus brought under 28 U.S.C. § 2241. See 28 U.S.C. § 22353(c)(1)(A); Montez v. McKinna, 208 F.3d 862, 867 (10th Cir. 2000) (holding that a state prisoner must obtain a COA to appeal the denial of a § 2241 habeas petition).

The Court may grant Foster a COA "only if [he] has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Court previously denied Foster's § 2241 motion on the ground that it was not timely filed and did not address the merits of Foster's claim. (See Dkt. Nos. 11, 13.) As a result, the requisite "substantial showing" Foster must make is two-fold: "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right[,] and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Foster is not tasked

with demonstrating that his appeal will succeed. Miller-El v. Cockrell, 537 U.S. 322, 337 (2003).

Here, Foster fails to proffer any argument or evidence for the requisite showing under Slack. Therefore, Foster's Motion for Certificate of Appealability [Dkt. No. 15] is **DENIED**.

IT IS SO ORDERED this 1st day of May, 2006.



ROBIN J. CAUTHRON
United States District Judge